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IN THE

Supreme Court of the United States

October Term 1948

No. 474

INGRAM M. STAINBACK, Governor of the Territory of Hawaii, WALTER D. ACKERMAN, JR., Attorney General of the Territory of Hawaii, and W. H. LOPER, Superintendent of Public Instruction of the Territory of Hawaii,

Petitioners,

vs.

MO HOCK KE LOK PO, an eleemosynary corporation, DAI KUNG CHINESE SCHOOL, an eleemosynary corporation; CHUNG SHAN CHINESE SCHOOL ASSOCIATION, an eleemosynary corporation, WAH CHAN THOM, WILFRED CHONG and LEONG NGET CHO,

Respondents.

Reply to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit Before Judgment.

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Respondents are in accord with petitioners that this is a proper case for this Court to exercise the power granted by new Title 28 U. S. C., Section 1254(1) to grant certiorari to the Court of Appeals for the Ninth Circuit before judgment.

Though the posture of this case is not identical, it is sufficiently similar to *Ex parte Quirin*, 317 U. S. 1 to warrant this court exercising its jurisdiction to grant certiorari. In the *Quirin* case, applications for leave to file petitions for writs of *habeas corpus* were filed directly in this court after denial by the District Court for the Dis-

trict of Columbia of leave to file the petitions in that Court. The applications were filed before any appeal to the Court of Appeals for the District had been perfected. The applications for leave to file the petitions were set down for argument before this court and while the arguments thereon were preceeding, petitioners perfected their appeals in the Court of Appeals for the District of Columbia and filed petitions for writs of certiorari before judgment. This court exercised its jurisdiction and granted these latter petitions. It decided the cases on the petitions thus granted.

The instant case is strikingly similar. Here, because of the question concerning the three-judge court, petitioners filed their direct appeal pursuant to new Title 28 U. S. C., Sections 1253 and 2101(a). Since this Court felt the question was of sufficient importance to order argument thereon, just as it ordered argument on the applications in the *Quirin* case, it would seem proper that, just as in that case, it grant the petition for the writ of certiorari to the Court of Appeals, where an appeal has been perfected.

Respondents suggest that the instant case comes within Rule 39 of this court and "that the public interest will be promoted by prompt settlement in this court of the questions involved."

As in the *Quirin* case, the same reasons which prompted this Court to set the direct appeal down for argument are equally applicable on the question of granting certiorari before judgment to the Court of Appeals.

In the public interest, the many thousands of children in the Territory of Hawaii whose schooling is being affected by this case should not be required to be delayed

until the matter is first decided in this court on a procedural point and then, perhaps, by the Court of Appeals on the merits and then again by this court on the merits. The years taken out of their lives while this process is going on cannot be replaced. It is in "the greater interests of the public." (*St. Louis K. C. & C. R. Co. v. Wabash R. Co.*, 217 U. S. 247, 251) that the matter be now disposed of by this Court where the case is already pending (*cf. Hicks v. Mercantile Trust Co.*, reported sub. nom. *White v. Mechanics Securities Corp.*, 260 U. S. 283, 299; *Royal Insurance Co. v. United States Shipping Board Merchant Fleet Corp.*, reported sub. nom. *Johnson v. United States Shipping Board Emergency Fleet Corporation*, 280 U. S. 320, 324, 325; *Eastern Equities Corporation v. United States*, reported sub. nom. *Graham & Foster v. Goodcell*, 282 U. S. 409, 411, 412, 415, note 2; and *cf. Fetters v. United States ex rel Cunningham*, 283 U. S. 638, 641).

Even aside from the fact that the case is already pending before this court, the matter of the schooling of so many thousands of children would seem to be in and of itself sufficient reason in the public interest for the granting of the petition. (*Cf. Railroad Retirement Board v. Alton Railroad Co.*, 295 U. S. 330, 333, 334, 344; *Carter v. Carter Coal Co.*, 298 U. S. 238, 286; *United States v. Bankers Trust Co.*, reported sub. nom. *Norman v. Baltimore and Ohio R. Co.*, 294 U. S. 240, 243, 295.)

Moreover, the rights of the children of Hawaii and of their parents are not alone at stake in the instant case; equally, though of course indirectly, at issue are the rights of the millions of children and their parents on the mainland of the United States, who may be made the subject

of similar legislation by the various state legislatures, if the Hawaiian Territorial Statute challenged herein is valid.

The briefs *amici*, filed, and to be filed, urging the unconstitutionality of the statute by the American Jewish Congress, the American Civil Liberties Union, the American Veterans Committee, and other organizations concerned with civil liberties, attest, in part, to the concern of many in the issues in this case.

Accordingly, the respondents (appellees in *Stainback v. Bo*, No. 52, Oct. Term, 1948) do not object to the grant of certiorari; but on the contrary, in so far as they may, consent thereto, in order that thus this court may pass upon the merits of the constitutionality of the Hawaiian Statute challenged herein.

Respectfully submitted,

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